

1 **FOR PUBLICATION**

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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re) Case No. 02-06410-B7
12)
12 DWYNN GREENFIELD and AIMEE)
13 GREENFIELD,) OPINION
13)
14 Debtors.)
14 _____)

15 The Debtors seek to exempt from their bankruptcy estate
16 an "individual retirement account" (IRA) which Aimee
17 Greenfield inherited pre-petition from her father. The
18 Trustee objects to the claim of exemption on the ground that
19 the IRA is not being used by the Debtors for retirement
20 purposes.

21 This Court has subject matter jurisdiction pursuant to
22 28 U.S.C. § 1334 and General Order No. 312-D of the United
23 States District Court for the Southern District of California.
24 This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

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2 **FACTS**

3 In November of 2000, Aimee Greenfield (Debtor) inherited
4 from her father an "individual retirement account" (IRA).
5 From the date of the inheritance through the present the
6 Debtor has taken regular disbursements from the IRA as
7 required by the Internal Revenue Code (IRC). When the Debtors
8 filed their petition commencing this case on June 27, 2002,
9 they sought to exempt the IRA from their bankruptcy estate
10 under California Code of Civil Procedure (CCP) §
11 703.140(b)(10)(E). The Debtors' schedules indicate that as of
12 the date of the petition the IRA was worth \$67,099.00.

13 On September 26, 2002, Gregory Akers, the Chapter 7
14 Trustee (Trustee), filed an objection to the Debtors' claim of
15 exemption on the ground that the Debtors were not using the
16 IRA for retirement purposes.

17
18 **DISCUSSION**

19 **Burden**

20 There is disagreement as to which party bears the burden
21 of proving whether or not the exemption is properly claimed.
22 Bankruptcy Rule 4003(c) places the burden of proving that an
23 exemption is not properly claimed on the party objecting
24 thereto -- the Trustee in our case.¹ However, the propriety

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26 ¹ Rule 4003(c) provides:

1 of Rule 4003(c) in a case such as this has been called into
2 question. In In re Barnes, 275 B.R. 889 (Bankr.E.D.Cal.
3 2002), the court noted:

4 The allocation of the burden of proof in Rule
5 4003(c) may run afoul with the Supreme Court's
6 recent decision in Raleigh v. Illinois Department of
7 Revenue, 530 U.S. 15 (2000). In Raleigh, the debtor
8 was the president of a defunct corporation that owed
9 state use taxes. When the taxes were not paid, the
10 state assessed them to the debtor as the responsible
11 corporate officer. The assessment meant that the
12 state believed the debtor was the person who had
13 willfully failed to direct the corporation to pay
14 the taxes. When the debtor filed a chapter 7
15 petition, the state filed a proof of claim based on
16 its prior assessment. The trustee objected to the
17 proof of claim on the ground that the state had not
18 proven that the debtor was liable for payment of the
19 tax. The Supreme Court rejected this argument,
20 reasoning that outside of the bankruptcy court the
21 corporate officer would have to prove that he was
22 not the person responsible for filing returns and
23 paying taxes for the corporation. Inside bankruptcy
24 court the burden still rests with the debtor, or the
25 trustee as the representative of the debtor's
26 estate. The Supreme Court held, then, that when the
matter in dispute is governed by nonbankruptcy
substantive law, the burden of proof is dictated by
that same nonbankruptcy law. Under California law,
the party claiming an exemption has the burden of
proof when claiming or defending the exemption. See
Cal.Civ.Proc.Code § 703.580(b). This includes
exemptions that must be claimed and those that apply
even absent a claim of exemption. See
Cal.Civ.Proc.Code § 703.510(b). Since California
has opted out of the federal exemption scheme, the
debtors must claim California exemptions. See 11
U.S.C. § 521(b)(1); Cal.Civ.Proc.Code § 703.130. The
burden of proof, then, is determined by California
law and not the Bankruptcy Code or the Bankruptcy
Rules. In this case, the debtors have not met the
burden of proving their entitlement to an exemption

In any hearing under this rule, the objecting party has the burden of proving that the
exemptions are not properly claimed. After hearing on notice, the court shall determine
the issues presented by the objections.

1 under section 704.100(a).

2 Barnes, 275 B.R. 889, 899 n.2. Notwithstanding the language
3 quoted above, the actual ruling on the burden issue in the
4 Barnes case is not clear. While the footnote set out above
5 seems to place the burden on the debtors, the court also
6 states:

7 While the trustees have the burden of proving under
8 Fed. R. Bankr.P. 4003(c) that the debtors are not
9 entitled to the exemption, the debtors are duty
bound by 11 U.S.C. § 521(4) to provide a copy of the
contract to the chapter 13 trustee.

10 This seems to indicate that the trustee maintained the
11 ultimate burden.

12 The Ninth Circuit BAP has also discussed the issue:

13 We need not, and do not, address the bankruptcy
14 court's deference to the state court's alternative
15 holding that the debtor did not prove that the funds
16 were necessary for his support upon retirement.
17 The alternative holding was based on the exemption
18 claimant's burden of proof under state law. In
19 contrast, Federal Rule of Bankruptcy Procedure
4003(c) purports to place the burden of proof on the
party objecting to a claim of exemption. The issue
of whether Rule 4003(c) validly re- allocates the
burden of proof imposed by state exemption law need
not be decided in this appeal.

20 Williams, 280 B.R. 857, 863 fn. 5 (9th Cir.BAP 2002).

21 The court in Raleigh did indeed look to state law in
22 placing the burden. However, Raleigh dealt with a situation -
23 - an objection to a proof of claim -- for which neither the
24 Bankruptcy Code nor the Bankruptcy Rules provide a burden of
25 proof:

26 Congress of course may do what it likes with

1 entitlements in bankruptcy, but there is no sign
2 that Congress meant to alter the burdens of
3 production and persuasion on tax claims. The Code
4 in several places, to be sure, establishes
5 particular burdens of proof. See, e.g., 11 U.S.C.
6 § 362(g) (relief from automatic stay), § 363(o)
7 (adequate protection for creditors), § 364(d)(2)
(same), § 547(g) (avoidability of preferential
transfer), § 1129(d) (confirmation of plan for
purpose of avoiding taxes). But the Code makes no
provision for altering the burden on a tax claim,
and its silence says that no change was intended.
[FN2]

8 FN2. The legislative history indicates that the
9 burden of proof on the issue of establishing claims
10 was left to the Rules of Bankruptcy Procedure. See
11 S.Rep. No. 95-989, p. 62 (1978); H.R.Rep. No.
12 95-595, p. 352 (1977), U.S.Code Cong. & Admin.News
13 1978 at 5787. The Bankruptcy Rules are silent on
14 the burden of proof for claims; while Federal Rule
15 of Bankruptcy Procedure 3001(f) provides that a
16 proof of claim (the name for the proper form for
17 filing a claim against a debtor) is "prima facie
18 evidence of the validity and amount of the claim,"
19 this rule does not address the burden of proof when
20 a trustee disputes a claim. The Rules thus provide
21 no additional guidance.

120 S.Ct. 1951, 1955-56 & n.2.

16 Contrarily, in the case of exemptions and objections
17 thereto, the Rules do provide a specific and clear allocation
18 of the burden -- Rule 4003(c). Accordingly, the Raleigh case
19 may not apply.

20 Fortunately, this Court, like the BAP in Williams, is
21 able to resolve the present matter without determining on whom
22 the burden would ultimately fall. That is, the matter can be
23 resolved based upon facts that are not in dispute.

24
25 **Section 703.140(b)(10)(E)**
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1 CCP § 703.140(b)(10)(E) provides that a debtor may
2 exempt, in relevant part:

3 (10) The debtor's right to receive any of the
4 following:

5 (E) A payment under a stock bonus, pension,
6 profitsharing, annuity or similar plan or contract
7 on account of illness, disability, death, age, or
8 length of service, to the extent reasonably
9 necessary for the support of the debtor and any
dependent of the debtor, unless all of the following
apply:

(iii) That plan or contract does not qualify under
Section 401(a), 403(b), or 408 of the Internal
Revenue Code....

10 The Ninth Circuit has held that Section 703.140(b)(10)(E)
11 covers IRA's in general. In re McKown, 203 F.3d 1188, 1190
12 (9th Cir. 2000). The court in McKown did not discuss whether
13 a particular IRA would qualify nor did it set out the
14 standards to be applied. However, the bankruptcy court did
15 provide it's reasoning for including an IRA as a "similar plan
16 or contract:"

17 An IRA comes within the scope of section
18 703.140(b)(10)(E) if it is "similar" to a stock
19 bonus, pension, profit sharing, or annuity plan
20 providing for payments to the debtor on account of
21 age. IRAs and stock bonus, pension, profit
22 sharing, and annuity plans share a common
denominator. They are "aimed to enable working
taxpayers to accumulate assets during their
productive years so that they might draw upon them
during retirement."

23 McKown, 203 B.R. 722, 724-25. The Court finds this rationale
24 persuasive and further finds that it argues against the
25 Debtors in this case. The Debtors' IRA is not "aimed to
26 enable working taxpayers to accumulate assets during their

1 productive years so that they might draw upon them during
2 retirement." In the present case the Debtors are using the
3 money now at the relatively young age of forty-one.² The
4 Court recognizes that under the IRC the Debtors have no choice
5 but to use the money now. However, the Debtors themselves
6 explain that, even if not required to take current
7 disbursements, the disbursements are
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9 necessary for their current support. See Debtors' Response at
10 6:22-26.

11 The case most directly on point, and one upon which both
12 parties rely, is In re Sims, 241 B.R. 467 (Bankr.N.D.Okla.
13 1999). In Sims the debtor, like Mrs. Greenfield, inherited an
14 IRA pre-petition. The court held that the IRA could not be
15 exempted under the Oklahoma state exemption scheme which
16 provides an exemption for "any interest in a retirement plan
17 or arrangement qualified for tax exemption purposes under
18 present or future Acts of Congress..." Like the Debtors in
19 the present case, the debtor in Sims had taken distributions
20 from the IRA prior to his retirement. The court reasoned:

21 Once in the hands of Dr. Sims, the IRA is no longer
22 a tool to defer taxation on income in order to
23 provide for retirement; instead, the IRA is a
24 liquid asset which may be accessed by Dr. Sims at
his discretion without penalty, and which he must
take as income within a relatively short period of
time without regard for his retirement needs.

25
26 ² The Debtors provide in their response to the Trustee's objection that Aimee Greenfield is 41
years old. They provide no age for Dwyann Greenfield.

1 Sims, 241 B.R. at 270. The Debtors attempt to distinguish
2 Sims on the grounds that their disbursements have been small
3 and regular as opposed to Sims' two large disbursements.³
4 However, the Court is persuaded that the size and regularity
5 of the disbursements is of less import than the purpose for
6 the disbursements. In order to qualify for an exemption the
7 IRA must be used for "retirement needs." The Debtors are
8 presently using the IRA funds, but they are simply not of
9 retirement age. Furthermore, it appears from the Debtors'
10 calculations that there will be very little if any income from
11 the IRA for the Debtors by the time they reach retirement age.
12 The monthly income from the IRA has already dropped from \$134
13 in 2002 to \$84 in 2003. See Debtors' Response at 4:11-14.

14 In light of the fact that the Debtors are using the IRA
15 primarily for other than retirement purposes, the Court
16 concludes that the Trustee's objection is well taken. The IRA
17 is not exempt under CCP § 703.140(b)(10)(E).⁴

19 CONCLUSION

20 For the foregoing reasons the Court sustains the
21 Trustee's objection to the Debtors assertion of an exemption -
22 the IRA may not be exempted from property of the Debtors'
23 bankruptcy estate under CCP § 703.140(b)(10)(E).

24 ³ Dr. Sims had taken two pre-petition disbursements of \$32,150.00 and \$1,998.00.

25 ⁴ The Debtors also contend that the IRA would be exempt under CCP § 704.115(a)(3).
26 The Debtors have not, however, asserted an exemption under this section. Therefor, the Court will not consider this argument.

1 IT IS SO ORDERED.

2 DATE: _____

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6 Court PETER W. BOWIE, Judge
United States Bankruptcy